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December 3, 1999

BY FACSIMILE

The Honorable Henry Solano
Solicitor
Department of Labor
200 Constitution Avenue, N.W. - Room S2002
Washington, D.C. 20210

Dear Mr. Solano:

This letter responds to a letter just received from Deputy Solicitor Sally Paxton about our investigation of your agency's use of non-codified documents and your agency's explanation within each of them to ensure the public's understanding of their legal effect. On October 8, 1999, I asked you to provide a compendium listing all of the Department's non-codified documents and a copy of each non-codified document by November 19th.

During a November 12th meeting with Ms. Paxton and other Department staff, the Subcommittee staff agreed to narrow the scope of my request to only non-codified documents issued from March 1996 (when the Congressional Review Act was enacted) to October 1999 by the Occupational Safety and Health Administration (OSHA). They also agreed that the Department could begin by providing OSHA's 1999 documents. After the Subcommittee's review of these documents, the prior-issued documents would still need to be provided but might not need to include a tabbed indication of your agency's explanation of their legal effect.

On November 16th, the Department responded that the initial search would be completed by December 3rd (today) and that the rest should be available on December 30th. In response to my request for speedier production, a November 29th e-mail from Department staff indicated that 1999 production would be completed by December 23rd and that the prior year documents would be provided by mid-January 2000.

At 6:10 P.M. today, December 3rd, the Department provided only five sample documents. Today's letter also curiously stated that, after the Subcommittee's review of OSHA's 1999 documents, I could "make a better assessment of what other documents [I] would need in the future." On the contrary, our review will not narrow my document request because I am

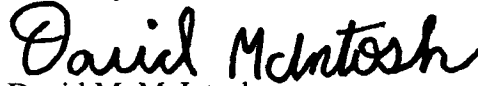
interested in the entire universe of documents the public receives. The Subcommittee's review of the 1999 documents will only help us decide if the Department needs to tab the legal effect information in each document issued prior to 1999. Therefore, I expect the Department to provide all non-codified documents issued by OSHA during the March 1996-October 1999 period. I asked for a compendium of these documents by December 31st, nearly three months after my initial request. It is inconceivable to me that the Department will be unable to provide this compendium by December 31st.

Today's letter also asked that I send a formal request for you to indicate the estimated cost of contractor assistance with this task, broken down by component. My October 8th letter did not request this information because I never dreamed that the Department would assign this task to non-departmental personnel. I assumed that each agency within the Department centrally managed its non-codified documents and that the Department legally reviewed each prior to its issuance to ensure that it clearly provided an explanation within the document to ensure the public's understanding of its legal effect. Therefore, please also indicate what percent of OSHA's non-codified documents issued from March 1996-October 1999 were not reviewed prior to their issuance by the Department's legal staff. Please also provide the contractor assistance cost information and legal review information no later than December 31st.

If you have any questions about this request, please call Professional Staff Member Barbara Kahlow on 226-3058.

Thank you for your attention to this request.

Sincerely,



David M. McIntosh

Chairman

Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable Dennis Kucinich